October 12, 2007

Ms. Jennifer L. Johnson, Secretary
Board of Governors
Federal Reserve System
20th and Constitution Ave., N.W.
Washington, DC 20551
By email: regs.comments@federalreserve.gov
By fax: 202-452-3819

Re: **Comments to Docket No. R-1286**
Regulation of Credit Cards

Dear Ms. Johnson:

I am writing from the Metropolitan Milwaukee Fair Housing Council (MMFHC), a 30 year old nonprofit civil rights organization, to comment on the Federal Reserve Board's proposed revisions to credit card and other open end credit disclosures under the Truth in Lending Act (TILA). MMFHC, in its work with borrowers experiencing fair lending problems, has found that credit card abuses often compound the troubles caused by predatory home loans.

We appreciate the Board's efforts to improve the disclosure requirements for this type of credit and protect borrowers. However, the Board is also considering several measures that will drastically reduce or even eliminate critical disclosures for credit cards that we believe are necessary to provide consumers with the information to effectively shop for the best price. These proposals will leave consumers with less information and give creditors huge loopholes to create new fees and other conditions that will likely have an unfair and deceptive effect on consumers.

Further, the Board's proposal does little to address common credit card abuses. Even where the Board has clear authority to enact substantive regulation, it seems to have chosen disclosures over meaningful protection. We urge the Board to use its rulemaking authority to enact substantive protections for consumers, or ask Congress to enact protections against the worst abuses of the credit card industry.

Proposals to Improve the Format and Timing of Disclosures Will Benefit Consumers

MMFHC supports the following proposals by the Board, which we believe will significantly improve credit card disclosures.

1. *Requiring the use of a table for disclosure of critical terms at important stages of a credit card account.* We support the proposal to require the use of a mandatory table format to disclose critical terms at more stages of the credit card "life cycle."

Currently, the only disclosures that require such a table, often referred to as a "Schumer box," are those given at the application or solicitation stage. The Board proposes to require a similar table when the account is actually opened, and when the creditor provides a change in terms notice. This proposal will dramatically improve the readability of credit card disclosures for many consumers, including immigrants, who have trouble reading complicated financial information.

2. *Extending the change in terms notice period from 15 to 45 days.* Currently, Regulation Z requires creditors to provide a change in terms notice 15 days before the change takes effect. The Board is proposing to lengthen this notice period to 45 days. While this is an improvement, reserving the right to make unilateral changes to credit card contracts is still an unacceptable industry practice. Rather than the extending the terms notice period, the board should ensure that consumers have the option to continue under the existing terms of the original contract with only a limited and well defined number of reasons for raising interest rates or charging additional fees.

3. *Requiring 45 days notice before: (1) imposing a penalty rate or (2) if a reduction in credit limit results in imposition of an over limit fee or penalty rate.* We support this requirement and, in addition to the 45 days notice, we support the Board's proposal to improve the disclosure of penalty rates in the applications/solicitation and account opening disclosures.

4. *Prohibiting use of the term "fixed" unless the interest rate is really fixed.* Currently, creditors use the term "fixed" in describing interest rates, but reserve the right to change these rates at will and to impose penalty rates. The proposal would prohibit the use of the term "fixed" unless the interest rate really will not change for a certain period of time, which must be disclosed, or is fixed forever. Consumers we work with complain that they were given papers that says that the interest rate was "fixed", but then the rates were, in fact, changed later.

5. *Addressing some subprime abuses.* The Board has proposed a few improvements targeted at subprime credit cards, most notably requiring a disclosure when the fees or security deposit charged to a credit card exceed 25 percent of the card's credit limit. While not curbing most of the abuses of subprime cards, the proposal may help some consumers become aware of the traps of these cards. However, we believe that the threshold for these disclosures should be lower, requiring disclosure when the fees or deposit on the card exceeds 5 percent of a card's credit limit.

Shrouding the True Cost of Borrowing, Limiting the types of fees that must be disclosed and eliminating the effective APR is Bad for Consumers

The Board has made three proposals that will radically reduce the content and meaningfulness of credit card disclosures. We are greatly concerned about these proposals.

1. *Permitting Creditors to Disclose a Range Of APRs In The Application Disclosures, So That The Creditor Can Later Assign An APR After Reviewing The Consumer's Credit Score.*

   The Board has proposed permitting creditors to disclose a range of Annual Percentage Rates (APRs) in credit card application disclosures, so that the creditors can make a post-application review of the consumer's credit score. Creditors would be permitted to delay disclosure of the actual APR that the creditor is offering until the consumer receives the account opening disclosures (often along with the credit card itself).

   This problem is especially acute with respect to balance transfers. Our clients often tell us that the problematic credit card they have was opened as a result of a solicitation to transfer the balance from a higher rate card. Struggling to keep their heads above water, these high-interest credit cards sound good to borrowers, but ultimately pull resources from families and communities that could otherwise be put toward legitimate housing, health and educational uses.

   The Board proposes to permit creditors to disclose a range of APRs, then assign the real APR after the consumer has initiated the balance transfer. With balance transfers, consumers often move balances of hundreds or thousands of dollars, thus committing themselves to significant liability under the terms of the account.

   Consumers should not be forced to make the decision regarding transferring hundreds or thousands of dollars in debt blindly, just to make it more convenient for creditors to engage in risk-based pricing.

2. *Limiting Fees Required to Be Disclosed to an Exclusive List*

   The Board has proposed to drastically limit the number of fees that creditors are required to disclose at account opening and for change in terms notices. The only fees that creditors will be required to disclose in these notices are:

   a. Annual or other periodic fee
   b. Transaction fees - cash advance, balance transfer, ATM or currency conversion fee
   c. Penalty fees - late payment, overlimit, or returned payment fee
   d. Minimum finance charge

   For all other fees besides these four categories, the creditor need only disclose the fee at any time prior to when the fee is imposed. Furthermore, these other fees can be disclosed orally, without the requirement of written documentation. Finally, only the fees in the four specific categories will require change in terms notices.

   We are concerned that the Board's proposal will encourage creditors to develop new fees outside of these four categories that do not need to be disclosed ahead of time and in writing.

3. *Modifying or Eliminating the Effective APR*

The Board is proposing two alternatives for the effective APR. The first alternative would be to modify it. The second would be to eliminate it.

a. We are strongly opposed to eliminating the effective APR

The effective APR and its calculation are specifically mandated by Section 1606 of TILA for open-end credit. The Board's contradicts the very reason Congress enacted TILA, because it would eliminate the only APR in open end credit that reflects the total cost of borrowing. The Board's stated rationale for this alternative is that consumers are confused by the effective APR and do not understand it. This is the same "confusion" argument often used by high cost lenders, such as payday lenders. In fact, the Board's proposal provides ample incentives for payday lenders to convert their predatory loan products into open end credit.

Indeed, the Board admits in its analysis that an effective APR is the best way to provide information about an open end credit product that did not impose periodic interest charges but only transaction or flat fees. The Board notes these products are not common; however, they will become more common if the effective APR is eliminated.

If consumers are confused by the effective APR, the solution is to improve the disclosure, not eliminate it. The Board has taken one step, discussed below, by relabeling it as a "fee inclusive APR" and providing an explanation. The Board needs to move further in that direction, not get rid of the most informative measure of the cost of credit in credit cards.

b. We supporting strengthening the effective APR

The Board's second alternative is to modify the effective APR by –

i. labeling it the "Fee Inclusive" APR and requiring an explanation of what it means;

ii. limiting the fees included in the calculation of the effective APR to 5 categories – periodic interest, transaction charges (cash advance, balance transfer), mandatory credit insurance/debt cancellation, minimum finance charges, and account activity/account balance fees;

iii. requiring disclosure of a separate effective APR for each fee.

MMFHC supports the first modification - to rename the effective APR as the "Fee Inclusive APR" and to provide a more comprehensive explanation. The new name and explanation is a significant improvement.

We are concerned about the second and third modification. Limiting the effective APR to only the enumerated categories of fees will, for the same reasons as stated in the section above, permits creditors to change their fee structures slightly to avoid falling into one of the enumerated categories.

We are also concerned with the third modification to the effective APR proposed by the Board. By requiring a separate effective APR for each fee, this only calculates the APR using one fee at a time. By not adding the fees together in the effective APR calculation, the proposal understates the true cost of credit.

The Board Needs to Adopt Additional Protections for Credit Card Borrowers

Despite its considerable improvement to credit card disclosures, the proposed rule is woefully inadequate to combat the most serious of credit card abuses. Simply put, disclosures alone will never adequately protect consumers. The proposed rule fails to prohibit the worst of credit card practices, such as:

1. Universal default or its variant “adverse action repricing”
2. Retroactive application of interest rate hikes
3. Over limit abuses, including the fact that the creditors permit consumers to go over the limit, then charge high fees for additional credit)
4. Excessive penalty fees and default rates
5. Abusive late payment rules
6. Payment allocation abuse
7. Payment posting abuse
8. Unilateral changes in terms

The Board has improved disclosures regarding some of these practices, but disclosures alone are not sufficient to protect consumers from over-reaching creditors because consumers lack equal bargaining power and are almost always subject to unilateral changes made to contracts they already signed. Disclosures are relatively meaningless to people with limited understanding of financial terms and especially to immigrants with limited English skills.

Unfortunately, the credit card market does not provide any real choices for consumers with good credit seeking transparency and the ability to understand the total cost of borrowing. If the consumer does not have a good credit score (and a poor credit score often triggers abusive practices such as universal default), they have little or no options for an affordable credit card.

The Board has the authority to ban banking practices that are unfair or deceptive under the Federal Trade Commission Act. 15 U.S.C. § 57a(f). It also has authority under TILA to address some substantive abuses, such as payment posting and allocation abuses under Section 1666c. Yet it has taken no action to address these abuses. The Board’s failure to act is particularly glaring in light of the preemption of substantive state law protections. Thirty years ago, states protected consumers from abusive banking practices. Today, preemption has eliminated those protections without replacing them with any parallel federal protections.

To the extent that the Board cannot ban certain practices using its FTC Act authority or TILA, we also urge the Board to weigh in with Congress to ask for true reform of the credit card industry. The message should be: pass federal legislation that will protect American consumers from the increasingly unfair, abusive, and virtually unavoidable practices of the credit card industry. Real, substantive limits on the terms of credit, and the cost of the credit, including the interest rate and all fees and charges, must be re-imposed.

MMFHC recommends substantive regulation:

1. A floating cap on all periodic interest rates
2. A limitation on fees and charges to an amount the creditor can show is reasonably related to cost.
3. No unilateral adverse changes in interest rates or fees during the contract period
4. A ban on retroactive interest rate increases.
5. No universal default or penalties for any behavior not directly linked to the specific card account at issue.
6. No over limit fees allowed if the creditor permits the credit limit to be exceeded.
7. A ban on repeated or "rollover" late and overlimit fees.
8. No improvident extensions of credit – real underwriting of the consumer's ability to pay should be required.
9. No mandatory arbitration, either for consumers' claims, or for collection actions against consumers.
10. Tougher TILA penalties that provide real incentives to obey the rules.
11. A private right of action to enforce Section 5 of the Federal Trade Commission Act, which prohibits unfair or deceptive practices by businesses, including banks.
12. Restrictions on marketing credit cards or extending credit to youth.

While we do not agree with all of the Board's proposals, we commend the Board for its efforts to improve credit card disclosures. However, we urge the Board to undertake a new rulemaking to declare credit card abuses to be unfair practices. For those practices that may require Congressional action, we urge the Board to use its substantial influence to recommend such legislation to Congress.

The Metropolitan Milwaukee Fair Housing Council's work to increase housing choice, by helping borrowers and assisting with the creation of safe, affordable homes and neighborhoods is threatened by the lending practices of credit card companies. We look forward to working with the Board to strengthen protections for consumers. When all consumers have equal access to fairly-priced credit, the entire economy will be strengthened.

Sincerely,

Bethany Sanchez
Community and Economic Development Director